



AN Docket No. 17-351

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Federal Communications Commission
Office of the Secretary

By Hand and Email (auction83@fcc.gov)

Margaret W. Weiner, Chief
Auctions & Spectrum Access Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

DOCKET FILE COPY ORIGINAL

Re: Request for Waiver of 47 C.F.R §1.2105(b)(2)
Indirect Subsidiaries of Clear Channel Communications, Inc.
Action No. 83

Dear Ms. Weiner:

Monticello Media LLC ("Monticello") hereby opposes the request of Clear Channel Communications, Inc. ("CCCI") to dismiss Monticello's opposition (the "Waiver Opposition") to the request (the "Waiver Request") of CCCI for a waiver of Section 1.2105(b)(2) of the Commission's rules to allow CCCI's indirect subsidiaries (the "CC Applicants") to participate in Auction No. 83 despite the change in control of CCCI in 2008 and, with such change, the change in control of the CC Applicants. *See* Letter from Repp Law Firm to Margaret W. Wiener, Esq., December 11, 2013 (the "Dismissal Request"). The Dismissal Request has no merit and should be denied forthwith.

CCCI's Dismissal Request revolves around a Petition to Deny which Monticello filed against an application (the "Charlottesville Application") by Clear Channel Broadcasting Licenses, Inc. ("CCBL"), one of the CC Applicants, for a translator in Charlottesville, Virginia. *See* File No. BNPFT-20130821ABF. In that Petition to Deny, Monticello explained, *inter alia*, that the Charlottesville Application should be dismissed or denied pursuant to Section 1.2105(b)(2) of the Commission's rules because a transfer of control of CCCI, the ultimate parent of the CC Applicants, was consummated on July 30, 2008. CCBL filed an Opposition (which is attached to the Dismissal Request), and Monticello filed a Reply. Monticello's Petition to Deny

and its Reply are annexed hereto as Exhibits A and B and are incorporated herein by reference.

The Charlottesville Application was initially identified by the Commission as being mutually exclusive with another translator application in May 2013. *See Public Notice*, DA 13-1170 (May 21, 2013). However, CCBL subsequently filed an amendment to the Charlottesville Application to eliminate that mutual exclusivity, and, as a result, the Charlottesville Application became a "singleton."

CCCI filed its Waiver Request at or about the same time that CCBL amended the Charlottesville Application to eliminate the mutual exclusivity with another pending translator application. In that Waiver Request, CCCI made virtually the identical arguments which CCBL made in its opposition to Monticello's Petition to Deny the Charlottesville Application. Consequently, as it explained in the Waiver Opposition, Monticello was compelled to oppose CCCI's Waiver Request because a grant of that Waiver Request would necessarily result in a denial of Monticello's Petition to Deny with respect to the Charlottesville Application. Monticello therefore has standing to oppose the Waiver Request because (1) Monticello would suffer a direct injury if the Commission granted the Waiver Request (and presumably use that Waiver Request to deny Monticello's Petition to Deny with respect to the Charlottesville Application); (2) Monticello's injury is causally related to any grant of the CCCI Waiver Request; and (3) a denial of the Waiver Request will necessarily result in a denial or dismissal of the Charlottesville Application, which in turn would provide the relief requested in Monticello's Petition to Deny. *See Riverside Youth & Rehabilitation*, 23 FCC Rcd 10360, 10362-63 (MB 2008).

The Dismissal Request fails to explain why there is no causal relationship between CCCI's Waiver Request and Monticello's Petition to Deny the Charlottesville Application. Nowhere, for example, does CCCI explain how the Commission can grant the Waiver Request (to allow the CC Applicants to participate in Auction No. 83 despite the change of control of CCCI in 2008) and simultaneously grant the relief in Monticello's Petition to Deny (which requests that the Charlottesville Application be dismissed or denied because of that same change of control of CCCI in 2008). Stated another way, the disposition of Monticello's Petition to Deny may well depend on the Commission's disposition of CCCI's Waiver Request.

CCCI nonetheless contends that "Monticello has no standing in this proceeding [involving the mutually exclusive applications filed by the CC Applicants]." Dismissal Request at 1. The Dismissal Request is totally devoid of citation to any authority to support that contention. CCCI does not even cite to any rule or precedent which states that a party like Monticello needs to have "standing" in order to interpose an objection to a waiver request with respect to a pending translator

application. Instead, CCCI devotes virtually all of its Dismissal Request to a repetition of arguments why a grant of the Waiver Request is justified.

To that end, CCCI contends again that the 2008 transfer of control for CCCI was not “an everyday occurrence” but instead constituted “a multi-station transfer of control at the holding-company level of a magnitude that would rarely, if ever, be replicated . . .” Dismissal Request at 2. No one can doubt the magnitude of the CCCI transfer of control. But the size of the CCCI transaction hardly constitutes a valid basis for providing CCCI with a waiver that has not been and presumably would not be accorded to other translator auction applicants who have experienced in the past or might experience in the future a transfer of control. And even if size could somehow be a relevant basis for granting a waiver of Section 1.2105(b)(2), CCCI’s Dismissal Request provides no criteria whatsoever to identify the point at which the size of a transfer of control transaction could somehow be a distinguishing factor. In the absence of any reasoned basis for making distinctions based on the size of the transaction, the Commission will indeed be inundated by waiver requests from other auction applicants who experience a transfer of control.

CCCI similarly claims that a waiver would somehow be appropriate because this is not a situation “where new third party entities desired to step into the assignor’s shoes” but rather a situation where “the CC Applicants here will be the auction participants.” Dismissal Request at 2-3. Again, that observation provides no basis whatsoever to justify a waiver. Every transfer of control involves a situation where the licensee (or as the case may be the applicant) remains the same. If that were a basis for granting the waiver, then every transfer of control would be exempt from the strictures of Section 1.2105(b)(2). Beyond that, the point is specious – the people who control and manage CCCI (and the CC Applicants) today are completely different than the people who controlled and managed CCCI when the CC Applicants filed their translator applications in 2003.

It is of course true that the Commission has the authority to grant a waiver if the policy or purpose of the underlying rule would not be compromised by the grant of the waiver. *See e.g. WAIT Radio v. FCC*, 418 F.2d 1153, 1160 n. 21 (D.C. Cir. 1969). However, CCCI has provided no fact or argument to show that the purpose and policy of Section 1.2105(b)(2) would be preserved by allowing the CC Applicants to participate in the auction despite a transfer of control that occurred more than five (5) years ago. Quite the contrary. A grant of the CCCI Waiver Request would completely undermine Section 1.2105(b)(2) by allowing a party (1) to ignore its obligation under Section 1.2105(b)(4) to amend its application within five business days after a change of control and (2) then allow applicants to participate in any auction despite a prohibited transfer of control.

Monticello’s arguments herein in response to the Dismissal Request are virtually identical to the same arguments which Monticello advanced in its Petition to

Deny with respect to the Charlottesville Application. That fact confirms Monticello's standing to oppose the CCCI Waiver Request. However, it would not matter if Monticello did not have standing. Section 73.3587 of the Commission's rules entitles any party – regardless of standing – to file an informal objection to any pending application. Consequently, Monticello has the right to interpose an objection to the Waiver Request even if it does not have standing.

Monticello need not and will respond to CCCI's arguments about contractual issues. They are irrelevant to the issues raised by the Waiver Request. *See* Monticello's Reply to Opposition to Petition to Deny (October 17, 2013), annexed hereto as Exhibit B, at 3 n.2

In view of the foregoing and the entire record herein, it is respectfully requested that the CCCI Dismissal Request be denied.

Sincerely,

PILLSBURY WINTHROP SHAW
PITTMAN LLP

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By: 

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